IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMM. FOR JUDGMENT NO. 696 OF 2003

IN

SUMM.SUIT NO.975 OF 2002

M/s Pravin Electri. a Pvt.Ltd Co.. Plaintiff

versus

M/s SPS Engineering Ltd .. Defendant

Mr.B.M.Raikar for Plaintiff

None present for Defendant

CORAM : D.G. KARNIK, J

DATED : 12th April 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None present for the defendant. I have perused the plaint, affidavit in support of the Summons for Judgment and the affidavit in reply filed by the defendant. The defendant entered into a contract with Gas Authority of India Ltd (for short GAIL) for installation of electrical work and services. The defendant sub-contracted part of the work to the plaintiff.

Accordingly, the plaintiff carried out the work and submitted its bills. As the defendant failed and neglected to make the payment the plaintiff has filed this suit for the recovery of the money. By filing an affidavit in reply the defendant has admitted having entered into a contract with GAIL and has further admitted having given part of the work to the plaintiff. The defendant however contends that it was agreed between the parties that the defendant would make the payment to the plaintiff after receiving payments from GAIL. He further contends that the plaintiff had agreed not to make any grievance or grudge until payment was released by GAIl. He contends that since payment has not been released by GAIl the defendant is not liable to make the payment.

2. In para 9 of the plaint, the plaintiff has stated that it has executed a bond in favour of GAIL and thereafter GAIL has released the payment to the defendant. The contract between the parties does not contain any term that the defendant would not be liable to make payment until GAIL makes the payment to the defendant. There is no dispute that the plaintiff carried out the work. There is no dispute that the defendant has not paid to the plaintiff. In the

circumstances, there is no defence of substance available to the defendant. However, merely as an act of mercy, I am inclined to grant conditional leave to the defendant.

3. Accordingly the defendant is granted conditional leave to defend the suit subject to its depositing in the court a sum of Rs.10,00,000/- within four weeks. On such deposit the plaintiff shal be entitled to withdraw 50 % of the money by furnishing bank guarantee and remaining 50 % of the money by furnishing security to the satisfaction of the Prothonotary and Senior Master.

4. On deposit of the money suit shall stand transferred to the list of commercial causes. The defendant shall file the written statement within 8 weeks.

D.G.KARNIK, J